

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANAIS ORTIZ, as Independent Administrator of the Estate of ANTONIO FIERRO, Deceased,)	
)	
Plaintiff,)	
)	
V.)	Case No. 13 CV 7626
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

FIRST AMENDED COMPLAINT AT LAW

NOW COMES the Plaintiff, ANAIS ORTIZ, as Independent Administrator of the Estate of ANTONIO FIERRO, Deceased, by and through her attorneys, KRALOVEC, JAMBOIS & SCHWARTZ, and complaining of the Defendant, UNITED STATES OF AMERICA (hereinafter “USA”) and states as follows:

I. Preliminary Statement

1. Plaintiff, ANAIS ORTIZ, files this action against the USA for the medical negligence/general negligence of its agents and/or employees at PCC COMMUNITY WELLNESS CENTER, which proximately caused the death of ANTONIO FIERRO, a minor.

2. On or about February 11, 2013, Plaintiff, ANAIS ORTIZ, presented a medical negligence/general negligence claim on behalf of her minor deceased son, ANTONIO FIERRO, to the U.S. Department of Health and Human Services pursuant to the provisions of the Federal Tort Claims Act, Title 28 §1346(b), 2671-2680, alleging liability of the United States Government. See Attached Exhibit A.

3. On May 22, 2013, the United States Government rejected the claim of ANAIS ORTIZ

in a letter which is attached hereto as Exhibit B.

4. That ANAIS ORTIZ has been appointed as Independent Administrator of the Estate of ANTONIO FIERRO, deceased, by the Circuit Court of Cook County, Illinois, evidencing her right and standing to sue. A copy of the Order is attached hereto as Exhibit C.

5. The cause of action of this Complaint against USA is the same cause of action contained in the claim to the U.S. Department of Health and Human Services.

II. Jurisdiction & Venue

6. This Court has jurisdiction of the action pursuant to 28 U.S.C. Section 1346 and 2671, et seq.

7. Venue is proper under 28 U.S.C. Section 1402(b).

III. The Parties

8. Plaintiff, ANAIS ORTIZ, is bringing this action in her capacity as Independent Administrator of the Estate of ANTONIO FIERRO, deceased.

9. ANAIS ORTIZ, at all relevant times, was a resident of the State of Illinois.

10. ANTONIO FIERRO, deceased, at all relevant times, was a resident of the State of Illinois.

11. USA, through the U.S. Department of Health and Human Services, maintains the PCC COMMUNITY WELLNESS CENTER (hereinafter "PCC"), located in Illinois.

IV. Factual Allegations

12. At all relevant times hereto, the Defendant, USA, by and through its agents, servants and/or employees, was a health care facility located in the State of Illinois, employing various health care professionals and offering medical services, including but not limited to diagnosis, treatment,

and consults to the public and to ANAIS ORTIZ and her unborn child, ANTONIO FIERRO.

13. That on and subsequent to December 6, 2011, and at all times relevant hereto, USA, by and through its actual and apparent agent, servant and/or employee, including, CHRISTINE SWARTZ, M.D., accepted and undertook to provide medical and obstetric care and treatment to ANAIS ORTIZ and her unborn child, ANTONIO FIERRO.

14. That on and subsequent to December 6, 2011, and at all times relevant hereto, CHRISTINE SWARTZ, M.D., was a physician licensed to practice medicine in the State of Illinois.

15. That on and subsequent to December 6, 2011, and at all times relevant hereto, CHRISTINE SWARTZ, M.D. was an agent, servant and/or employee, whether actual or apparent, of USA.

16. That on and subsequent to December 6, 2011, and at all times relevant hereto, Paul Luning, M.D. was an agent, servant and/or employee, whether actual or apparent, of USA.

17. That at approximately 10:00 p.m. on December 6, 2011, ANAIS ORTIZ, presented to WEST SUBURBAN with ruptured membranes.

18. That at approximately 12:26 a.m. on December 7, 2011, ANAIS ORTIZ was admitted to the Labor and Delivery department at WEST SUBURBAN under the care of CHRISTINE SWARTZ, M.D.

19. That at approximately 6:00 a.m. on December 7, 2011, ANAIS ORTIZ was started on Pitocin per Paul Luning, M.D.'s order.

20. That at approximately 10:00 a.m., an epidural was inserted into ANAIS ORTIZ per Paul Luning, M.D.'s order.

21. That at approximately 11:30 p.m. on December 7, 2011, CHRISTINE SWARTZ,

M.D. performed a cesarean section on ANAIS ORTIZ.

22. That during the procedure it was determined that ANAIS ORTIZ had sustained a uterine rupture and significant blood loss.

23. On December 7, 2011, ANAIS ORTIZ gave birth to ANTONIO FIERRO who did not appear to have a pulse.

24. That on or about December 8, 2011, ANTONIO FIERRO was transferred to Children's Memorial Hospital.

25. That on or about December 16, 2011, ANTONIO FIERRO died.

26. Each of the Paragraphs of this Complaint is incorporated as if restated fully herein.

27. At all times relevant hereto, there existed a duty on the part of the Defendants, USA, by and through its actual and apparent agent, servant and/or employee, including, CHRISTINE SWARTZ, M.D., to provide adequate medical care, surgical care, diagnosis and treatment to its patients, including ANAIS ORTIZ and ANTONIO FIERRO.

28. Contrary to its duty, the Defendant, USA, by and through its actual and apparent agent, servant and/or employee, including, CHRISTINE SWARTZ, M.D., were guilty of one or more of the following careless and negligent acts or omissions:

- a. Failed to timely perform a cesarian section;
- b. Failed to sufficiently and timely evaluate ANAIS ORTIZ;
- c. Failed to adequately monitor fetal heart rate activity;
- d. Failed to appreciate the alarming features on the fetal heart rate monitor; and
- e. Failed to appreciate ANAIS ORTIZ's VBAC status.

29. As a direct and proximate cause of one or more of the above-mentioned careless acts

and/or omissions of the Defendant, USA, by and through its actual and apparent agent, servant and/or employee, including, CHRISTINE SWARTZ, M.D., M.D., Decedent, ANTONIO FIERRO, sustained significant and irreversible injuries which ultimately resulted in his death on December 16, 2011.

30. Plaintiff attaches hereto, as Exhibit D, a copy of the report from a physician regarding the meritorious nature of the claim against USA for negligence.

WHEREFORE, the Plaintiff, ANAIS ORTIZ, as Independent Administrator of the Estate of ANTONIO FIERRO, Deceased, prays for judgment against the Defendant, USA, in such an amount in excess of this Court's jurisdictional requisite that will fairly and adequately compensate for the losses alleged herein.

BY: s/ Alexander M. Sukhman
Alexander M. Sukhman
ARDC #6270961
Attorney for Plaintiffs
KRALOVEC, JAMBOIS & SCHWARTZ
60 W. Randolph, 4th Floor
Chicago, Illinois 60601
Telephone: (312) 782-2525
Fax: (312) 855-0068
asukhman@kjs-law.com